Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Accelerating Wireless Broadband	**)**	**WT Docket No. 17-79**
Deployment by Removing Barriers	**)**	
To Infrastructure Investment	**)**	

To: The Commission

COMMENTS OF THE CRITICAL INFRASTRUCTURE COALITION

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Filed: June 15, 2017

EXECUTIVE SUMMARY

The *Critical Infrastructure Coalition* applauds the Commission for initiating this proceeding to explore streamlining the agency's wireless siting process. The *Coalition* members strongly support modest revisions to the Commission's wireless siting rules and policies to increase the efficiency, predictability and sustainability of the tower construction process while balancing the Commission's important interest in protecting sites of significant cultural or historical significance and other environmentally vulnerable areas.

The Commission should issue clarifying guidance to Tribal Nations, specifically with respect to the assessment of fees, Tribal geographic areas of interest, deadlines, remedies and dispute resolution. Over the past several years, the *Coalition* members have increasingly been charged higher fees from Tribal Nations for relatively routine tower siting projects. This has led to unpredictable costs. The TCNS process has also resulted in significant delays that have undermined the ability of coalition members to deploy communications infrastructure in a safe and efficient manner. Through this proceeding, the Commission has an opportunity to improve this process by offering guidance as to when a Tribal Nation may request payment, establishing a fee schedule, and adopting guidelines for the invoicing of fees.

The Commission also should make changes to the process through which Tribal Nations identify geographic areas of interest. For example, requiring Tribal Nations to select areas of interest by county or census tract as opposed to an entire state is mutually-beneficial to Tribal Nations and entities deploying communications infrastructure throughout the country. The Commission should also consider adopting a policy to appoint a single Tribal Nation as interfacing with a tower siting applicant seeking to erect a structure in an area identified by multiple Tribal Nations as being of interest.

This proceeding also presents the Commission with a unique opportunity to resolve minor inconsistencies between regulatory requirements for similar structures. For instance, there are different historic and environmental requirements for erecting a tower that will support licensed radio equipment or that requires an Antenna Structure Registration ("ASR") than for a similar tower that supports unlicensed spectrum and for which an ASR is not required. Similarly, Twilight Towers are only required to go through the review process when a collocation is proposed. Creating a consistent – and more relaxed – approach to these types of structures would correct arbitrary distinctions that frequently impede the deployment of infrastructure.

Finally, the *Coalition* urges the Commission to expand its "deemed granted" remedy to provide more consistent timelines for tower construction projects.

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OF THE
CRITICAL INFRASTRUCTURE COALITION

Pursuant to the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission")[1] the *Critical Infrastructure Coalition ("Coalition")* submits these Comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM") released in this proceeding on April 21, 2017. The *Coalition* members urge the Commission to consider changes to its wireless structure siting rules and policies that will streamline and increase the predictability and sustainability of the construction process.

I. INTRODUCTION

The *Critical Infrastructure Coalition* is comprised of seven oil and gas companies and one electric cooperative that make use of a wide variety of wireless communications services on a private basis to support internal daily operations. The *Coalition* includes members that collectively are involved in all phases of the petroleum and natural gas industries including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. These members utilize Private Land Mobile Radio ("PLMR") and Private

[1] 47 C.F.R. § 1.415

Operational-Fixed Microwave Services ("POFS"), among other telecommunications systems, to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial, and residential customers. In addition, these members use licensed radio systems to communicate with remote oil and gas exploration and production sites with voice and data applications, communications with refineries, the extension of circuits to remote pipeline pump and compressor stations, and supervisory control and data acquisition systems ("SCADA") that remotely monitor and control oil and gas wells, pipeline operations and other facilities.

The *Coalition's* electric cooperative member utilizes PLMR and POFS to support critical smart grid applications, metering, and internal voice communications to support its 6,000 miles of electric lines which span 10 counties across Texas and provide electricity to more than 52,000 people. The *Coalition's* oil and gas members operate over 115,000 miles of pipelines, and are important players in all levels of oil and gas exploration and production.

The *Coalition* members collectively own thousands of communications towers and similar structures used to support radio antennas throughout the United States. Because they often operate in remote areas of the country, *Coalition* members must acquire, construct, and maintain their own communications structures to provide platforms for these critical communications needs. These communications structures are frequently located in remote, rural areas and, as a result, the *Coalition* members have a unique perspective to share with the Commission with respect to the construction of communications structure.

II. COMMENTS

The FCC conducts Section 106 review of wireless tower and antenna undertakings in accordance with the Section 106 implementing regulations,[2] as modified and supplemented by two Nationwide Programmatic Agreements negotiated and executed a decade ago in accordance with 36 CFR 800.14(b).[3] These Nationwide Programmatic Agreements are codified in the FCC's rules at 47 CFR part 1, Apps. A and B.[4] These rules proscribe general obligations, but often do not provide clear requirements to navigate specific issues that arise during the Section 106 review process. In its current state, the process provides no certainty regarding project timelines, fees, and the extent to which any historic or cultural interests are impacted by a proposed tower project. The *Coalition* supports clear and concise rules and guidelines for the construction of and collocation on new communications facilities, while respecting the sovereignty of Tribal Nations. These Comments recommend common sense and practical changes to the rules to remove administrative barriers to the deployment of private internal critical infrastructure networks that are essential to the health and safety of the *Coalition's* employees, the public, and the environment.

A. Tribal Nations and the Tower Construction Notification System ("TCNS")

1. The *Coalition* supports Commission guidance on fees assessed by Tribal Nations during the TCNS process.

In recent years, members of the *Coalition* have seen a considerable increase in the number of Tribal Nations requesting fees to perform standard reviews associated with potential

[2] 36 C.F.R. part 800.

[3] *See* ACHP Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure (2014), at 5, http://www.achp.gov/docs/ptc-program-comment.pdf, (ACHP 2014 Program Comment), at 2.

[4] 47 CFR Part 1, Apps. A and B.

tower sites. The fee amounts requested by Tribal Nations to perform these initial reviews has also increased significantly in the past several years. One member reports that from the years 2008 to 2015, typical fee amounts requested by each Tribal Nation ranged from $125 to $500, with total fees ranging from $2,000 to $3,200 per tower site. From 2016 to the present, these ranges have more than tripled, with the per Tribe fees ranging from $500 to $1,500 and the total fees for a project ranging from $7,500-$10,000. One *Coalition* member reports that the total fees for a project that did not impact areas of interest to Tribal Nations were approximately $5,050 because of fees charged by Tribal Nations to perform initial reviews in response to a TCNS notification.

Although Tribal Nations are only permitted to request fees to cover expenses or to pay for contracting or consulting services[5], in practice Tribal Nations request fees upfront before even reviewing an application. This has become the norm and is the case for almost all construction projects. Projects often involve multiple fee requests as they move forward, and the requests rarely provide any explanation for what the fee covers. There is no way to predict the amount or number of fee requests that could be involved in a construction project.

In some instances, the fees incurred throughout the TCNS process are larger than the cost of construction.[6] The increase in both the amount and number of fee requests indicates an

[5] *See* ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook, at 13-14 (2012), http://www.achp.gov/pdfs/consultation-with-indian-tribes-handbook-june-2012.pdf (ACHP 2012 Handbook); *see also infra*., at 5.

[6] *See* Petition for Declaratory Ruling, PTA-FLA, Inc., WT Docket No. 15-180, at 8 (filed May 3, 2016) (PTA-FLA Petition)(stating "The tribal fees have become so exorbitant in some cases as to approach or even exceed the cost of actually erecting the tower. All of this necessarily delays and adds to the cost of constructing the towers that are essential to the achievement of one of the Commission's highest imperatives: getting broadband and effective communications to all segments of the American public.").

upward trend that should be checked by the Commission. Guidance on fee amounts and invoicing is needed.

a. The *Coalition* believes the Commission should offer guidance on when a Tribal Nation may request payment. This guidance should presume that preliminary reviews are not considered consulting or contracting services.

Under the Advisory Council on Historic Preservation's ("ACHP") guidance, payment to a Tribal Nation as part of the Section 106 process is appropriate when an applicant asks "for specific information and documentation regarding the location, nature, and condition of individual sites… In doing so, the agency essentially asks the tribe to fulfill the role of a consultant or contractor."[7] In this situation, the Tribal Nation is justified in requesting to be paid for its services, as a consultant or contractor.[8] Tribal Nations may also request fees for expenses incurred during review.[9]

Coalition members report that many Tribal Nations request fees for every review they conduct. These fee requests are not, almost as a rule, in exchange for services. Instead, members of the *Coalition* often receive requests for payment before the Tribal Nation has taken any action or incurred any expense. In one instance, two tribes in Texas responded to tower notifications by saying they would be happy to sign off on the request for a $500 "reviewing fee." The Commission should provide guidance indicating exactly when the Tribal Nation steps into the role of contractor or consultant. In such guidance, the Commission should presume that

[7] *See* ACHP, Fees in the Section 106 Review Process (2001), http://www.achp.gov/regs-fees.html (ACHP 2001 Fee Guidance).

[8] *See* ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook, at 13 (2012), http://www.achp.gov/pdfs/consultation-with-indian-tribes-handbook-june-2012.pdf (ACHP 2012 Handbook).

[9] *Id.*, at 13-14.

preliminary reviews or initial consultation efforts do not amount to contracting or consulting services.

The Commission should also offer guidance regarding the point at which a fee can be requested. As the Commission noted, "some Tribal Nations require the payment of a fee prior to performing even preliminary review of nearly all projects submitted to them via the TCNS."[10] In the experience of *Coalition* members, tribes will not even respond to applications until payment has been received. If a fee is requested before any action has been taken by the tribe and the tribe has provided no explanation of what the fee is intended to cover, it could reasonably be concluded that the applicant is paying for tribal involvement. The ACHP Handbook clearly indicates that applicants should not be required to pay "for any form of tribal involvement."[11] Additionally, the ACHP 2001 Fee Guidance provides that if a Tribal Nation will not respond without receiving payment, the applicant has met its obligation to consult under the Section 106 process.[12] The Commission should offer guidance confirming that fees may not be requested prior to any action on the part of the Tribal Nation. For fees assessed later in the process, Tribal Nation must clearly indicate what the payment is for. Further, the Commission should reinforce the ACHP fee guidance rule which would allow the applicant to move forward in the process if a Tribal Nation refuses to respond until payment is received.[13]

[10] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79, FCC 17-38 (rel. Apr. 21, 2017) (NPRM)., at para. 44.

[11] *See* ACHP 2012 Handbook, at 13.

[12] *See* ACHP 2001 Fee Guidance (stating "[i]f the agency or applicant has made a reasonably and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.").

[13] *See infra*., at 13.

b. The *Coalition* supports the Commission establishing a fee schedule to cap fees at a reasonable amount.

The *Coalition* supports the Commission establishing a fee schedule to cap fees at a reasonable amount for the services provided and expenses incurred. A Commission-established fee schedule would keep the fee amounts reasonable and provide predictability to applicants. The *Coalition* also supports a flat fee, if that flat fee is reasonable and cannot be assessed multiple times by any given number of tribes for the same project. For a single application, *Coalition* members have had a flat fee assessed by as many as eight tribes, meaning the applicant has paid the same flat fee eight times for the same project. The *Coalition* supports the fee cap proposed in the PTA-FLA Petition, in which no fee, even for an "exceptionally complex" review, should exceed $200.[14] If a Tribal Nation requests a departure from the fee schedule, the Commission should require documentation of the circumstances that warrant such departure.

c. The *Coalition* supports Commission guidelines for invoicing of fees in the TCNS Process.

Regardless of the approach the Commission takes in setting fees, the Commission should publish guidelines that require Tribal Nations to provide detailed invoices with fee requests. Members of the *Coalition* have reported that generally no explanation is provided with a fee request from a Tribal Nation. At most, a request for a fee might include a statement advising that an individual from the Tribal Nation may be required to travel to the site. Tribal Nations should be required to provide invoicing that clearly delineates the reason for the fee and the fee amount. If a general processing flat-fee is applied to all applications, a description of what the fee covers should be included on the invoice.

[14] *See* PTA-FLA Petition at 14 (proposing that "reviewing fees should be no more than $50 unless the tribe demonstrates that the review is exceptionally complex. In no event should the fee exceed $200.")

Such a requirement would ensure that fee amounts are reasonable and would provide more predictability to applicants as they navigate the process. Proper invoicing would make Tribal Nations more accountable for the fee charged, and would also provide documentation certifying that Tribal Nations are only charging for services provided when they are in the role of contractor or consultant or for expenses incurred.

2. Tribal Areas of Interest

The Commission's Tower Construction Notification Process allows Tribal Nations to identify geographic areas of interest at either a State or county level. As explained herein, once a Tribal Nation has designated a geographic area of interest, it is common practice for a Tribal Nation to assess an initial fee to determine whether the Tribe has a concern with the specific location within their particular area of interest.[15] As the Commission explained in its NPRM, Tribal Nations have improved their understanding of their history and cultural heritage in the years since the TCNS system was implemented.[16] Tribal Nations have not used this information, however, to narrow the areas in which they express interest. Instead Tribal Nations have increased the number of full States and counties for which they consider areas of interest and in turn, seek compensation from applicants. Tribal Nations commonly select entire States as opposed to individual counties.

a. The Commission should prohibit Tribal Nations from identifying areas of interest at the State level

The *Coalition* strongly supports the adoption of a policy which requires Tribal Nations to identify, under objective, independently verifiable criteria the areas where construction could

[15] *See* Competitive Carriers Association White Paper, WTB Docket No. 17-79, WT Docket No. 15-180, WC Docket Now 17-84 (filed June 8, 2017).

[16] *NPRM*, at para 53.

reasonably be deemed to have an impact on tribal grounds.[17] Although the *Coalition* fully supports and respects the sovereignty and rights of the Tribal Nations to protect their historic properties, TCNS should not be overbroad and should be populated with verifiably accurate information. Tribal Nations should not be permitted to indicate an interest in entire States.

The Commission should move towards increasing the level of GIS functionality incorporated into TCNS. TCNS should include the ability to describe areas of potential interest by coordinate boundaries, similar to how geographic area wireless licenses are described in the Universal Licensing System. Currently, GIS data exists for Native American reservations. That information should be incorporated into TCNS and expanded to include more granular detail regarding the areas of potential cultural or religious significant to Tribes.

b. TCNS should be modified so the specific locations of historic properties and sites that have already been identified by Tribal Nations are clearly marked for applicants.

If *Coalition* members know where previously identified historic properties and sites are during the initial phases of planning new construction projects, they can plan accordingly and avoid unnecessary fees and lengthy delays caused by the current Section 106 processes. Some Tribal Nations have already begun maintaining their own databases to map locations of cultural significance.[18] For example, the Miami Tribe of Oklahoma stated in its Comments that it has developed a state-of-the-art software system to maintain and administer the functions of its Section 106 Department related to the TCNS.[19] This information could be shared with applicants to reduce the burden on both applicants and Tribal Nations when new construction

[17] *See* PTA-FLA Petition, at 14-15.

[18] Comments of Miami Tribe of Oklahoma, WTB Docket No. 17-79, WT Docket No. 15-180 (filed April 18, 2017), at 1.

[19] *Id.*

projects are proposed. The FCC should develop similar systems for the benefit of the Tribes. In its recent report on Improving Tribal Consultation in Infrastructure Projects, the Advisory Council on Historic Preservation supported this concept by recommending that "Federal agencies should develop mechanisms for Indian tribes to carry out the identification and evaluations of historic properties of religious and cultural significance to them."[20]

The Tribal Notification process should allow for automatic pre-approval of construction projects at sites which have already been determined not to be of historic or cultural significance. To make that pre-approval possible, information about the location of historic properties and sites must be available in TCNS. In its Petition for Declaratory Ruling, PTA-FLA, Inc. noted that public identification of historic properties permits constructors to either avoid them altogether or know what they have to deal with from the outset.[21] Many *Coalition* members regularly encounter the scenario PTA-FLA described in its Petition wherein a Tribal Nation indicates that there is a historic site somewhere in a State that needs to be protected, but the Tribal Nation will only tell the applicant where the historic site is *not* located (for a fee).[22] PTA-FLA correctly pointed out that if everyone works from the same maps, potential impacts on tribal areas of concern would be significantly reduced, as would the need for unnecessary reviews.[23]

c. The FCC should adopt a policy which allows Tribal Nations responding to the same construction project to appoint a single Tribal representative to interface with the filer and monitor the site construction where necessary.

To avoid duplicative review processes by multiple tribes and, more importantly, to avoid applicants paying fees to several tribes for the same construction project, Tribal Nations that

[20] ACHP, Improving Tribal Consultation in Infrastructure Projects (2017) http://www.achp.gov/docs/achp-infrastructure-report.pdf ("ACHP Improving Tribal Consultation"), at 11.

[21] PTA-FLA Petition, at 15.

[22] *See id*.

[23] *Id*.

identify overlapping areas of interest should appoint a single representative to respond to applications for new construction submitted in TCNS. The tribal representative should then coordinate with other Tribes that have indicated the structure is in an area of interest and be responsible for any site monitoring and fulfilling the role of a consultant or contractor if deemed necessary by the tribes involved. The ACHP contemplated this type of arrangement in its Program Comment on Section 106 Review for Positive Train Control Wayside Poles and Infrastructure.[24] The ACHP's Program Comment stated that the FCC could comply with its Section 106 responsibilities for PTC infrastructure by allowing Tribal Nations to enter into negotiated agreements with railroads.[25] These negotiated agreements could consist of tribes opting out of the consultation process completely or by deferring to other nearby tribes to reduce their own administrative burden. For example, there are over 100 Federally-recognized tribes in the state of California and it is a common practice for those tribes to defer to other tribes when notified of a construction project in TCNS. The next logical step is for the Commission to create a mechanism which allows Tribal Nations to collaborate and form groups to participate in the consultation process.[26] This type of collaboration by the tribes will help accomplish the goals of the Commission by streamlining the tribal review process while advancing the goals of the National Historic Preservation Act.

[24] ACHP 2014 Program Comment, at 5.

[25] *Id.*

[26] *Policy Statement, In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes* (rel. June 23, 2000), at 5 (stating that it is committed to "identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities," and to "streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian Tribes.").

d. The Nationwide Programmatic Agreement ("NPA") should be amended to exclude from review all structures which will have no impact on tribal historic or cultural properties.

Section III. D. of the NPA currently excludes from Section 106 review "construction of a Facility less than 200 feet in overall height above ground level in an existing industrial park, commercial strip mall, or shopping center that occupies a total land area of 100,000 square feet or more…"[27] This exclusion is far too vague and does not clearly contemplate industrial facilities owned and operated by the *Coalition*. Further, the exclusion requires structure proponents to complete the process of participation of Indian tribes and NHOs. *Coalition* members regularly need to improve internal communications capabilities by adding communications structures or attaching antennas to existing structures at oil refineries and terminals, liquid natural gas storage facilities, pipeline compressor stations, land-based drilling rigs, and electric distribution stations, among others. When initially constructed, these facilities require extensive permitting by various Federal agencies like the Department of Energy and the Environmental Protection Agency. In addition, countless state and local reviews must be conducted. Many of these facilities have been in place for decades.

This type of construction and antenna placement in these facilities has no reasonable likelihood of impacting tribal historic or cultural properties. In addition, the use of communications facilities within industrial complexes owned and operated by the *Coalition* are always solely tied to supporting internal daily operations to promote the safety of personnel working in the field and the protection of the environment. The FCC should set clear and concise limits on Section 106 for low-impact communications facilities. It is the *Coalition's*

[27] *See* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 CFR Part 1, App'x C (NPA), at 9.

view that structures which do not require FCC tower registration should not require Section 106 review, including the Tribal and NHO participation process. However, at a minimum, the Commission should exclude all structures under a certain height from Section 106 review. By setting a clear standard the Commission will not only give constructors more certainty about how and where to build, but it will also promote the deployment of low impact communications structures like poles.

3. The Commission should provide guidance on remedies and dispute resolution, which indicate a clear deadline for response from a tribe and when a project can move forward without response from interested Tribal Nations.

As indicated *supra*, the ACHP makes it clear that an applicant who has made a good faith effort to consult with interested Tribal Nations may consider its obligation to consult under Section 106 complete if the Tribal Nation refuses to respond without payment.[28] The Commission should work with the ACHP to provide guidance for other circumstances in which an applicant may proceed without approval of the Tribal Nation.

The Commission should provide a deadline of 30 days for response from a Tribal Nation. This deadline should apply, not only to the initial request, but also to all communications and requests throughout the process. Members of the *Coalition* often gain an initial response from a Tribal Nation indicating an interest, but then hear nothing more from the tribe. Without a clear deadline for response, an applicant in this situation would experience significant delay while taking measures to elicit a response from the Tribal Nation. Further, some Tribal Nations have told *Coalition* members that they require SHPO concurrence prior to even looking at a request. In *Coalition* members' experience, the SHPO process takes a minimum of 30 days; therefore,

[28] *See supra*, at footnote 12.

tribes who wait for SHPO concurrence are already beyond 30 days before looking at the request. Under the current rules, an uncomplicated request can take more than 70 days to make it through the process. A clear deadline of 30 days for Tribal Nations to respond to the initial request, and all communications and requests that follow, would prevent significant delay and make the overall process more efficient.

The Commission should also make clear to applicants currently in navigating the process when they may proceed without a Tribal Nation's approval. Members of the *Coalition* have felt forced to pay fees to receive a response from a Tribal Nation. If these *Coalition* members had been made aware that their Section 106 obligation was complete, and that they were free to move forward in the process, significant time and money could have been saved.

4. The Commission should seek to enter into agreements regarding best practices with Tribal Nations.

Since September 2016, the Commission has been making efforts to resolve challenges between Tribal Nations and industry stakeholders.[29] The Commission should continue these efforts to reach agreements on best practices, and should seek to formally enter into agreements with Tribal Nations. The agreements should cover the topics addressed herein such as fee schedules and circumstances in which fees may or may not be assessed. Entering into such agreements would provide much-needed clarity and certainty to the process. Additionally, agreed upon best practices would assist applicants in planning project timelines and estimating costs.

[29] *See* NPRM, at para. 59.

B. Exemption of Certain Structures From Review

The *Coalition* members believe that there are inconsistencies with respect to which structures must go through the NEPA/NHPA review process and which may not. The *Coalition* encourages the Commission to correct these inconsistencies by excluding certain types of structures from the review process.

1. The Commission should exclude structures that are not required to have Antenna Structure Registrations from the NEPA/NHPA review process.

The requirements of NEPA and the NHPA apply to "federal undertakings." The FCC has delegated compliance obligations to its licensees and ASR applicants for antenna structures. Towers that are not required to be registered with the ASR database or do not support FCC licensed antennas are not required to undergo the FCC's NEPA/NHPA review process. This creates an odd result whereby two identical towers may require a very different approval process based solely on the type of equipment they support (*i.e.*, lights, video cameras, metrological equipment vs. FCC licensed equipment). The justification of whether a certain tower must undergo the FCC review process is not based on the potential for that structure to impact the environment or historical or Tribal sites, but merely based on whether the FCC's jurisdiction is triggered.

For sites not subject to the FCC's jurisdiction, protection of the environment, historic and tribal sites is conveyed through the State and local permitting process, or through the NEPA/NHPA review process of another Federal agency, where applicable.

The *Coalition* members support excluding from the Commission's review process all structures that do not require an Antenna Structure Registration. The *Coalition* members do not believe these is a significant nexus between the requirement to license an antenna that is attached

to a structure, and full review of that structure for NEPA/NHPA purposes. Particularly when such a structure would not be subject to NEPA/NHPA review if it was constructed to support, for example, a light, a video camera, or even a license-exempt antenna. Such structures are appropriately approved through the State and local permitting process. In addition, without a size limitation on the towers subject to NEPA/NHPA review, the question arises about whether to study structure such as poles that may have virtually no impact on its surroundings, but may be widely deployed throughout an area such as an energy production field. The *Coalition* members do support continued NEPA/NHPA review for structures that require ASRs. In such cases, the Federal registration process bears a nexus to the structure itself. In addition, many structures that require ASRs are larger and may have a greater propensity to trigger Area of Potential Affect impacts.

2. The Commission should exclude collocations on "Twilight Towers" from the NEPA/NHPA review process.

The *Coalition* believes that collocations on structures constructed between the adoption of the Collocation NPA and the NPA ("Twilight Towers") should be exempted from the Commission's review process. The current rules provide that either the collocation must complete the Section 106 process or the underlying tower must undergo a post-construction review process in order to collocate on a Twilight Tower.[30] In reality, the Twilight Towers have been in place for more than a decade. Undergoing the Section 106 process at this point is not meaningful and, worse, could lead to confusion on the part of the Tribes as to why consultation is occurring years after a tower was completed. Any bona fide issue with such structures should have long ago been ferreted out. The *Coalition* believes that if the collocation does not substantially increase the size of the tower, then no review should be required. These Twilight

[30] *See* NPRM, at para. 75.

Towers would not undergo any review, but for the proposed collocation. If the collocation does not substantially increase the size of the Twilight Tower, there is no risk that the tower would now have an impact on environmental, historical, or Tribal sites.

C. State and Local Review

The *Coalition* supports a streamlined State and Local review process. The *Coalition* commends the Commission's efforts to date to expedite the local review process; however, there are further steps the Commission can take to improve the process. The *Coalition* believes that all siting applications should be acted upon within a reasonable period of time, as determined by the Commission.

1. The *Coalition* supports a "Deemed Granted" Rule in which the State and Local Governments' authority lapses when they fail to act in a reasonable time.

A "deemed granted" remedy, in which applications are deemed granted when the state or local government fails to act in a reasonable time is already available for siting applications covered by the Section 6409 of the Spectrum Act.[31] The *Coalition* supports this remedy being made available to all siting applications, including non-Spectrum Act applications. Currently, for non-Spectrum Act application, when a state or local agency fails to act within the reasonable period of time, or "shot clock," the applicant may sue the agency pursuant to Section 332(c)(7)(B)(v).[32]

[31] *See* Middle Class Tax Releif and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 § 6409(a) (2012) (Spectrum Act), *codified at* 47 U.S.C. § 1455(a).

[32] *See* NPRM, at para. 8; *see also 2009 Shot Clock Declaratory Ruling*, 24 FCC Rcd at 14008-10, 14013-14, paras. 37-42, 49-50.

The *Coalition* believes that a lawsuit is not an effective remedy in this type of situation because it only further delays the process. The *Coalition* supports the Commission's proposal that the state or local agencies failure to act on an application within the reasonable period of time should result in the lapse of the state or local government's authority over the application.[33] This approach would truly serve as a remedy to applicants when a project is delayed due to inaction by the state or local agency. Further, this proposal provides clear consequences to agencies for their inaction and provides predictability to applicants with regard to timelines.

2. The *Coalition* supports streamlined review processes for all classes of deployments, including reduced shot clocks and clear guidance on when shot clocks should start running for state and local review.

Currently, the shot clock is 60 days for applications covered by the Spectrum Act and 90 days for non-Spectrum Act collocation applications.[34] The *Coalition* believes the Commission should harmonize the shot clocks for applications not subject to the Spectrum Act. The *Coalition* supports shortening the shot clocks to a more reasonable duration, and believes it would significantly help to streamline the process.

The *Coalition* supports the Commission providing clear guidance on when a shot clock begins to run. Some state and local agencies have extensive pre-application procedures. If these pre-application procedures have no deadline, they could effectively result in a moratorium on application processing. The *Coalition* requests that Commission guidelines provide that the shot clock begins to run when the applicant submits the application or submits formal documentation resembling an application, even if it is considered pre-application procedure.

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[33] *See* NPRM, at para. 14

[34] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014) (*2014 Infrastructure Order*), 29 FCC Rcd at 12956-57, para. 215; *see also* 47 CFR §1.40001(c)(2).

3. The Commission must encourage State Historic Preservation Officers ("SHPO") to adhere to the 30-day guideline and permit self-certification.

The Nationwide Programmatic Agreement states that a reasonable amount of time for SHPOs to respond to tower construction proposals is 30 days. *Coalition* members have reported that the average amount of time for a SHPO to evaluate and respond to a construction project notification for a new communications tower is between 90 and 180 days. These delayed responses make it nearly impossible for companies to maintain construction schedules or respond quickly when the need for a communications system upgrade or change is identified. The longer these construction projects take to complete the more expensive they become for the companies building them.

The *Coalition* also supports the revision of the Section 106 process to allow applicants to self-certify their compliance with the program. *Coalition* members regularly hire third-party consultants to coordinate the TCNS filings and the Section 106 process. If, as suggested herein, Tribal Nations could use TCNS to provide information about identified historic and culturally significant sites, third-party contractors should be permitted to certify on an applicant's behalf that the Section 106 processes have been adhered to, if necessary. By allowing "self-certification" by third-party contractors, the Commission can ensure that certifications are truthful and well-founded.

4. The *Coalition* supports the Commission's ban on Moratoria, and believes the Commission should reinforce the ban on moratoria and *de facto* moratoria.

The *Coalition* commends the Commission's position on state and local moratoria on application processing in the *2014 Infrastructure Order*.[35] The Commission ordered that "the

[35] *See generally 2014 Infrastructure Order*, 29 FCC Rcd at 12971-72, paras. 263-67.

shot clock runs regardless of any moratorium."[36] The *Coalition* believes the Commission should reinforce this position and provide clear guidelines on what constitutes a moratorium. For example, a state or local agency required pre-application process that effectively prevents an application from being filed should be seen as a *de facto* moratorium. In these cases and all moratoria, the *Coalition* supports the Commission's position that shot clock should continue to run regardless of the moratorium.

III. CONCLUSION

The *Coalition* applauds the Commission's interest, through this proceeding and others, in improving the wireless siting process. The *Coalition* strongly encourages the Commission to consider the changes described herein to both the tribal review and state and local review processes. Through these improvements, the Commission will better facilitate the construction of communications towers, while still ensuring the protection of areas of cultural and historical significance.

Respectfully,

/s/

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Filed: June 15, 2017

[36] *See id.*, at 12971, para. 265.